



the social & ethics committee handbook



Guidebook for South African Companies

Compiled by: Prof Deon Rossouw, The Ethics Institute of South Africa

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the social & ethics committee handbook

Guidebook for South African Companies

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Preface by GIZ

It has become clear to everyone that development processes cannot be mastered by the government alone. Each societal player has to play a role in the processes. This goes for the individual citizen as much as for civil society and the private sector. Responsible business behaviour or Corporate Social Responsibility (CSR) are the buzz words that touch on the role a private company can and has to play in a society and its developmental process: 'CSR is the responsible activity on the part of businesses with the aim of using their available leeway to foster sustainable development' (BMZ, 2010). Through socially and environmentally responsible business along the whole value chain, the situation of the natural environment, communities and employees can be improved and thereby the sustainability of businesses ensured. In this context, many companies already familiar with the concept of CSR also speak of 'sustainability' when referring to their responsible activities.

On behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ), the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH has been supporting responsible business practices since 2002. Within this worldwide sector programme, the Center for Cooperation with the Private Sector (CCPS), as one component, has been operating an office in Pretoria since 2005. CCPS supports Corporate Social Responsibility throughout Sub-Saharan Africa.

Within Africa, South Africa has made substantial progress in terms of its public regulatory frameworks and business-led approaches towards responsible business behaviour. Examples of this are the Broad-Based Black Economic Empowerment (B-BBEE) strategy and King III with its required compliance for listing at the Johannesburg Stock Exchange (JSE).

Since 1 May 2012, all state-owned companies, listed companies and public interest companies have had to set up Social and Ethics Committees. This provides them with an opportunity to strategically position CSR and sustainability within the company at the board level.

CCPS is glad to draw on the expertise of its partner organisation, the Ethics Institute South Africa (EthicsSA), and join forces with the Institute of Directors Southern Africa (IoDSA) in developing this handbook.

We are convinced that this handbook offers sound practical advice for those involved in the committees at their companies. We also trust that it will be a valuable tool for other organisations and parties interested in these issues.

Doris Popp

Head of CCPS Africa
Pretoria, September 2012

Endorsement by IoDSA

Having a Social and Ethics Committee is a legal requirement for many companies. However, with the existence of audit, sustainability, risk, corporate governance and other board committees, companies and directors may very well ask whether there is indeed a need for yet another committee.

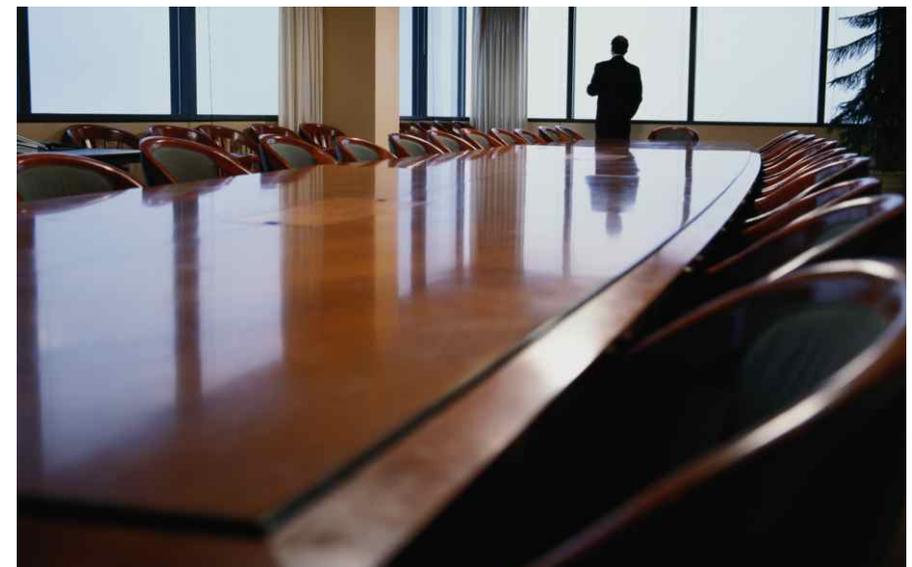
Seeing that it has become a reality, whether we agree with it or not, the discussion needs to advance towards how the Social and Ethics Committee could potentially be used to add value to business. The view of the Institute of Directors of Southern Africa is that if the Social and Ethics Committee is set up simply to comply with legislation it may be that an opportunity is missed.

It should be appreciated that making the Social and Ethics Committee more effective and a value-added committee is a learning process. The approach that should be adopted is to continuously review, tweak and make changes towards improvement.

This book will be an invaluable companion in this process.

Ansie Ramalho

Chief Executive: Institute of Directors Southern Africa



Introduction

In the first draft of the Companies Act of 2008 there was a single sentence on a new board committee that might be required for certain types of companies:

“The minister may by regulation prescribe that a company or a category of companies must have a social & ethics committee, if it is desirable in the public interest, having regard to (a) its annual turnover; (b) the size of its workforce; or (c) the nature and extent of its activities.” [Section 72 (4) of Act No. 71 of 2008]

The Companies Amendment Act (Act No. 3 of 2011) not only elaborated on section 72(4) quoted above, but also added another six sub-sections on social & ethics committees. When the Companies Regulations were gazetted in 2011 substantial more guidance on social & ethics committees was given in Section 43 of the said regulations.

What started out as a single sentence in the Companies Act of 2008 thus over time grew through the Companies Amendment Act and the Companies Regulations into much more substantial guidance on social & ethics committees.

Since 1 May 2012, the social & ethics committee has become a reality in state owned, listed, and so-called public interest companies in South Africa as that was the date on which such companies were required to appoint a social & ethics committee.

Initially, the reality of social & ethics committees was slowly and reluctantly embraced by South African companies. A survey conducted in May of 2012 found that:

- 50% of companies that were supposed to have a social & ethics committee had established a committee by 1 May 2012;
- 41% of companies felt that their social & ethics committee understands its mandate; and
- 11% of companies indicated a strong awareness of the role and functions of the social & ethics committee throughout the company.

(IoD/Mazar, 2012)

While some companies were slow and reluctant to establish a social & ethics committee, others willingly accepted and embraced the social & ethics committee as an opportunity to enhance their social and ethics governance.

Despite the initial ambivalent response to the social & ethics committee requirement, there is still much uncertainty and confusion regarding the role, responsibilities and operations of a social & ethics committee. This prevailing initial corporate mood is well captured by a corporate commentator who remarked:

“But here is some good news for those of us tasked with this responsibility [of setting up a social & ethics committee] – we are probably equally confused...!” (Van der Merwe, 2012: 15)

The purpose of this handbook is to clear up some of the confusion about the role, responsibilities and operations of a social & ethics committee.

This booklet is divided into three main sections:

Part One provides an overview of the context in which the social & ethics committee emerged. This part will focus mainly on the context of social and ethics governance as created by the King Reports on corporate governance in South Africa, and will then contextualise the social & ethics committee, as introduced in the new Companies Act, against that backdrop.

Part Two consists of a close reading of the legal requirements regarding the social & ethics committee. It will look into various aspects of the social & ethics committee, such as its composition, powers and mandate.

Part Three focuses on running an effective social & ethics committee. It will, amongst others, look at its operational aspects, such as the charter, membership, work plan and agenda.

Despite the initial confusion and misgivings that accompanied its introduction, there is a growing awareness that social & ethics committees can improve the social and ethics performance of companies. It elevates social and ethics matters to board level thus ensuring that they are treated as matters of strategic importance to the company. Companies that successfully implement social & ethics committees can expect to gain reputational advantage, enhance their sustainability, and improve their management of risk and legal compliance.



The context of the social & ethics committee

Although the introduction of the social & ethics committee was a new development in corporate governance in South Africa, the idea that companies should govern their social and ethics performance is not new. Internationally, there have been considerable developments, especially over the last three decades that emphasised the importance of governing the social and ethics performance of companies.

During this period, sustainability and corporate responsibility have become prominent concepts in the international business community. This period has also seen the emergence of various standards for corporate social and ethics responsibility, such as the United Nations Global Compact and the ISO 26000 Guidance on Social Responsibility. As a result of these developments, reporting on corporate social and ethics performance steadily increased. Reporting guidance and standards, such as those issued by the Global Reporting Initiative (GRI) and AccountAbility (AA), further advanced the process of monitoring and reporting corporate social and ethics performance.

The dawn of democracy in South Africa was accompanied by a growing awareness of corporate social and ethics responsibility. The government introduced a series of laws that had the intention of enhancing corporate social and ethics responsibility, such as the Employment Equity Act, the Broad-Based Black Economic Empowerment Act, the Consumer Protection Act, as well as various Industry Charters.

The private sector also took an initiative that would have an important influence on corporate social and ethics performance in the new South Africa with the formation of the King Committee on Corporate Governance in 1992. This committee produced its first report in 1994, a second one in 2002, and in 2009 the Third King Report (King III) was published.

The three King reports became important drivers of corporate social and ethics responsibility in South African corporations. They also had an impact on legal reform, on the Listings Requirements of the Johannesburg Stock Exchange (JSE) and on the introduction of the Socially Responsible Investment (SRI) Index of the JSE.

The guidance provided by the King Reports on the governance of corporate social and ethics performance provides a useful background for making sense of the legal requirements regarding the social & ethics committee in the new Companies Act. In the following sections the King III vision, principles and recommendations regarding the governance of social and ethics corporate performance will be briefly outlined.

The context of the social & ethics committee

1.1 King III on social and ethics governance

The Third King Report on Governance for South Africa starts with a chapter on “Ethical leadership and corporate citizenship”. Placing this chapter right at the beginning of the Third King Report was no coincidence, but rather a recognition that good governance starts with ethical leadership and corporate responsibility. In this chapter there are two principles that address the social and ethics aspects of corporate governance explicitly.

Corporate social performance

Principle 1.2 of King III addresses the social aspect of corporate governance when it states: *The board should ensure that the company is and is seen to be a responsible corporate citizen.* (King III Report, 2009: 22)

By describing the company as a “responsible corporate citizen”, King III advances a view of the company as a responsible member of the society in which it operates. It thus makes the company co-responsible for the well-being of the societies of which it is part. This view of the company is confirmed when the Report continues to explain that: *“As a responsible corporate citizen, the company should protect, enhance and invest in the well-being of the economy, society and the natural environment. Responsible corporate citizenship implies an ethical relationship of responsibility between the company and the society in which it operates.”* (King III Report, 2009: 22)

The view of the company as a responsible corporate citizen implies that the company is seen as having not only responsibilities towards shareholders, but also towards its other stakeholders. The board of directors consequently needs to consider not only the impact of the company's performance on the interest of its shareholders, but also its impact on other stakeholders, the society, the economy and the natural environment. This is made quite clear when the Chairman of the King Committee, Mervyn King, states in his introduction to the Third King Report that: *“The legitimate interests and expectations of stakeholders are considered when deciding in the best interest of the company. [...] The shareholder, on the premise of this approach, does not have a predetermined place of precedence over other stakeholders.”* (King III Report, 2009: 13)

But what does it mean in practical terms for a company to act as a responsible corporate citizen? In the Guidance on Social Responsibility issued by the International Standards Organization, namely the ISO 26000 standard, corporate responsibility is defined as:

“The commitment of an organization to incorporate social and environmental considerations in its decision-making and be accountable for the impacts of its decisions and activities on society and the environment.” (ISO 26000)

The above description of social responsibility implies that a company needs to take its impact on different contexts into consideration, not only in its decision-making, but also in respect of its accountability for such impact. A useful way to make sense of the different impacts that a company could have on its immediate context is provided by the following corporate responsibility diagram:



*Diagram 1: Dimensions of Corporate Responsibility
(Adapted from Crane, Matten & Spence, 2008)*

This diagram makes it clear that the company should firstly consider and be accountable for its impact on the marketplace in which it operates. This implies that the company should ensure that it does not, for example, undermine fair competition, or harm local economic development. The company should also ensure that its supply chain does the same.

Secondly, the company should consider its social impact on the workplace. That would, amongst others, imply that the company should take care of the health, safety and development of its staff.

Thirdly, the company needs to consider its impact on the communities affected by its operations. This would involve matters such as the impact of its products and services on the safety and health of consumers and on the development of the community.

Finally, the company needs to consider how its activities impact on the natural environment. This brings factors such as pollution, the use and conservation of scarce natural resources, and environmental sustainability into play.

The context of the social & ethics committee

The King III Code on Corporate Governance provides some practical guidance on what Principle 1.2 might mean in practice. Amongst others, it indicates the following practical implications:

- The company should consider its impact on the society and the environment;
- The company should protect, enhance and invest in the well-being of the economy, society and environment;
- The company should be guided by the South African Constitution and the Bill of Rights;
- The company should collaborate with stakeholders to promote ethics and corporate citizenship; and
- The company should develop measurable corporate citizenship policies and implement them. (cf. King III Code, 2009: 20-21)

Corporate ethics performance

Besides governing the social performance of corporations, the King III Report also emphasises the responsibility of the board of directors to ensure that the ethics of the company is governed well. This is explicitly stated in Principle 1.3 of King III: *“The board should ensure that the company’s ethics are managed effectively.”* (King III Report, 2009: 24)

The Report then continues to unpack what it means to manage a company’s ethics effectively by introducing the various elements of an ethics management process. This ethics management process consists of the dimensions illustrated in the diagram below.



Diagram 2: The ethics management process

The ethics management process that the board should ensure is implemented in the company consists of four aspects. Each of these four aspects is briefly outlined below.

The first aspect is the assessment of a company’s ethics risks and opportunities. This entails engaging with stakeholders to determine whether there are negative risks to which the company is exposed. Negative ethics risks refer to unethical behaviours (e.g. fraud, abuse of company property, gender or racial discrimination), unethical practices (e.g. nepotistic employment or corrupt procurement practices) or unethical beliefs (e.g. a belief such as “we will win at all cost”) that might exist in the company. Ethics opportunities refer to ethical behaviours, practices and beliefs from which the company would benefit.

The second aspect of the ethics management process is the development of ethics standards and policies. Based on its unique ethics risk profile, the company should develop ethics standards that will assist it in avoiding ethics risk and embracing ethics opportunities. These ethics standards can take the shape of a code of conduct and/or ethics policies on specific matters, such as giving or receiving gifts, procurement, or conflicts of interest.

The third aspect of the ethics management process is the implementation of ethics standards and policies. Codes and policies are mere words on paper that will only have an impact on organisational behaviour once they are properly implemented. Such implementation can be achieved through various interventions, such as training, communication, safe-reporting mechanisms, reward systems, and disciplinary procedures.

The final aspect of an ethics management process consists of internal and external reporting on the ethics performance of the company. Internally, the internal audit team needs to report to the company’s management and board on the adequacy and effectiveness of the ethics management process. Externally, the company’s ethics performance needs to be reported in the company’s sustainability and integrated report that will be disclosed to its shareholders and other stakeholders.

Ultimately, all these aspects of an ethics management process should contribute to the cultivation of an ethical corporate culture. This implies that ethics should become a way of living in the company. Or, as is often said in popular parlance: *the way we do things here even when nobody is watching.*

In summary, King III recommends that boards of directors should ensure that both the social and ethics performance of companies should be well-governed. This imperative for social and ethics governance provides the context for the introduction of the social & ethics committee.

The context of the social & ethics committee

1.2 The Companies Act on social and ethics governance

In Section 7 of the Companies Act, which deals with the purpose of the Act, a telling point is made when it states that one of the purposes of the Act is to:

Reaffirm the concept of the company as a means of achieving economic and social benefits. [Section 7(d) of Act no. 71 of 2008]

This specific purpose of the Companies Act makes it clear that companies in South Africa are not regarded as merely vehicles for producing benefits for shareholders of companies, but also as vehicles for producing wider economic and social benefits to the South African society as a whole. The introduction of the social & ethics committee in the Act can thus be seen as a mechanism for ensuring that companies do indeed monitor and report whether they produce social benefits to the economy, workplace, society, and natural environment.

The heading under which the social & ethics committee is introduced in the Companies Act is also significant. Section 72 of the Companies Act that deals with the social & ethics committee carries the heading: "Board committees". It thus seems that while the social & ethics committee is a statutory committee with specific legal duties of monitoring and reporting, it is also seen as a board committee that assists the board in exercising its social and ethics governance responsibility. This role of the social & ethics committee as a committee of the board is also reflected in the social & ethics committee's responsibility for drawing matters within its mandate to the attention of the board of directors. By constituting the social & ethics committee as simultaneously a statutory and a board committee, the Companies Act gives expression to another purpose of the Companies Act, which is to:

Promote the development of the South African economy by encouraging transparency and high standards of corporate governance as appropriate, given the significant role of enterprises within the social and economic life of the nation. [Section 7(b) (iii)]

The mandate of the social & ethics committee gives the committee three responsibilities:

1. To monitor the company's activities with regard to the following five areas of social responsibility:
 - (i) social and economic development;
 - (ii) good corporate citizenship;
 - (iii) the environment, health and public safety;
 - (iv) consumer relationships; and
 - (v) labour and employment.

2. To draw matters within its mandate to the attention of the Board as required.
3. To report to the shareholders at the company's annual general meeting on the matters within its mandate.

The social & ethics committee thus firstly has a monitoring responsibility and secondly a double reporting responsibility: its first reporting responsibility is to the board of directors (as and when required), and its second reporting responsibility is to the shareholders at the company's annual general meeting. This mandate of the social & ethics committee will be unpacked in more detail when a close reading of the Companies Act and Regulations is done in Part Two of this handbook.

1.3. A comparison between King III and the Companies Act

Comparing the above brief expositions of the Third King Report and the Companies Act, a number of similarities and dissimilarities emerge. The similarities between the two documents are the following:

- Both King III and the Companies Act adopt an inclusive view of the company by not regarding it merely as a vehicle for producing shareholder benefits, but also for producing social benefits to a wider range of stakeholders and for the environment.
- Both King III and the Companies Act impose a responsibility on the board of directors for governing the social performance of the company.
- Both King III and the Companies Act impose a responsibility on the board of directors (or on the social & ethics committee of the board) for reporting on the social performance of the company.

There are, however, also some striking dissimilarities between the two documents:

- While the King III Report also imposes the responsibility for the governance of ethics (as stipulated in Principle 1.3, discussed above), the mandate of the social & ethics committee is quiet on the governance of ethics. The last time the word "ethics" is seen in the mandate of the social & ethics committee is in the name of the committee (cf. Rossouw, 2011:29).
- The external reporting responsibility of the board of directors on social and ethics matters is much more comprehensive in King III than the reporting responsibility of the social & ethics committee. As indicated above, in the King III Report the board's reporting responsibility is not confined only to social matters, but also includes the responsibility to report on the company's ethics. Furthermore, whereas the social & ethics committee mandate only requires reporting to shareholders at the



The responsibilities of the social & ethics committee

In this section, a close reading of the relevant sections of the Companies Act of 2008 (as amended in 2011) (hereafter the Companies Act) and the Companies Regulations of 2011 (hereafter the Regulations) will be done. Relevant aspects regarding the requirement for having a social & ethics committee, exemption from this requirement, as well as the composition, appointment, mandate and powers of the social & ethics committee will be outlined. Finally, the consequences of non-compliance with the social & ethics committee requirement of the Companies Act will be highlighted. The relevant sections of the Companies Act and Regulations will be included in text boxes for ease of reference.

2.1. Companies required to have a social & ethics committee

The criterion for whether a company must have a social & ethics committee is the company's impact on the public interest. The factors considered to be material for determining a company's impact on the public interest is the company's annual turnover, the size of its workforce, as well as the nature and extent of its activities. Two categories of companies are automatically considered to meet this requirement, namely:

- All state owned companies; and
- All listed public companies.

A third category of companies required to have social & ethics committees are companies with a public interest score of higher than 500 points in any two of the preceding five years.

The requirements for having a social & ethics committee can be seen in text box 1 below:

43. Social and Ethics Committee
- (1) This regulation applies to—
- (a) every state owned company;
 - (b) every listed public company; and
 - (c) any other company that has in any two of the previous five years, scored above 500 points in terms of regulation 26(2).

*Text box 1: Companies required having a social & ethics committee
[Companies Regulations 43 (1)]*

Guidance is provided to companies on how they should go about calculating their public interest score. Regulation 26(2) makes it clear that four factors need to be used to calculate a company's public interest score, namely:

The responsibilities of the social & ethics committee

- The number of employees working for the company;
- The amount of debt that the company has at the end of its financial year;
- The amount of turnover that the company had during its financial year; and
- The number of shareholders of the company (or members in the case of a non-profit company) at the end of its financial year.

The formula for calculating a company's public interest score according to Regulation 26(2) can be seen in text box 2 below:

- (2) For the purposes of regulations 27 to 30, 43, 127 and 128, every company must calculate its 'public interest score' at the end of each financial year, calculated as the sum of the following:—
- (a) a number of points equal to the average number of employees of the company during the financial year;
 - (b) one point for every R1 million (or portion thereof) in third party liability of the company, at the financial year end;
 - (c) one point for every R1 million (or portion thereof) in turnover during the financial year; and
 - (d) one point for every individual who, at the end of the financial year, is known by the company—
 - (i) in the case of a profit company, to directly or indirectly have a beneficial interest in any of the company's issued securities; or
 - (ii) in the case of a non-profit company, to be a member of the company, or a member of an association that is a member of the company.

*Text box 2: Formula for calculating public interest score
[Companies Regulations 26 (2)]*

2.2. Exemption from the social & ethics committee requirement

The Companies Act allows companies to apply for exemption from the requirement of having a social & ethics committee under certain conditions. The two conditions stated in the Act are:

- If the company is already required by another law to have an existing structure in place that actually performs the functions prescribed by the Companies Act to the social & ethics committee; or
- If the nature and extent of the company's activities are such that it does not have any significant impact on the public interest.

These two conditions are stated in section 72(5) of the Companies Act as displayed in text box 3 below:

- (5) A company that falls within a category of companies that are required in terms of this section and the regulations to appoint a social and ethics committee may apply to the Tribunal in the prescribed manner and form for an exemption from that requirement, and the Tribunal may grant such an exemption if it is satisfied that—
- (a) the company is required in terms of other legislation to have, and does have, some form of formal mechanism within its structures that substantially performs the function that would otherwise be performed by the social and ethics committee in terms of this section and the regulations; or
 - (b) it is not reasonably necessary in the public interest to require the company to have a social and ethics committee, having regard to the nature and extent of the activities of the company.

*Text box 3: Grounds for exemption from the social & ethics committee requirement
[Companies Act, Section 72 (5)]*

The Regulations add one further instance in which a company is not required to have a social & ethics committee, namely when a company is "a subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required by this regulation on behalf of that subsidiary company". [Companies Regulations 43(2)]

Should a company wish to be exempted from the social & ethics committee requirement, it needs to apply for such exemption from the Companies Tribunal. Further guidance on the procedure for applying for exemption can be found in the Companies Act, sections 72(6) and 72(7).

2.3. Composition and appointment of a social & ethics committee

The Regulations prescribe the minimum membership of a social & ethics committee. The committee must consist of a minimum of three directors or prescribed officers. (Prescribed officers are defined in Regulation 38). At least one of these directors must be a director who is not involved in the day to day management of the company's business and who was not involved in the management of the company in the preceding three financial years.

The Regulations only refer to the first three members of a social & ethics committee, thus leaving scope for the board to appoint more members to the committee should it wish to do so.

The responsibilities of the social & ethics committee

The requirements regarding the membership of the social & ethics committee are displayed in text box 4 below:

- (4) A company's social and ethics committee must comprise not less than three directors or prescribed officers of the company, at least one of whom must be a director who is not involved in the day-to-day management of the company's business, and must not have been so involved within the previous three financial years.

*Text box 4: Membership of the social & ethics committee
[Companies Regulations 43 (4)]*

From the manner in which the membership of the social & ethics committee is compiled, it seems to be out of step with the best practice recommendation of King III that board committees should consist of a majority of non-executive directors, the majority of which in turn should be independent non-executive directors. The lack of this requirement, coupled with the fact that two out of the three required directors can be executive directors – or even prescribed officers – has given rise to speculation that the law-maker might have intended the social & ethics committee to be an operational committee rather than a committee that provides guidance on and oversight of the social and ethics performance of the company (cf. Candor, 2012: 9). But then again it also might just be an oversight by the law-maker.

The Companies Act and Regulations are also somewhat ambiguous in respect of the appointment of the social & ethics committee and its members. Regulation 43(2) states that the company must appoint the social & ethics committee whereas Regulation 43(3) states that the board of the company must appoint the first members of the social & ethics committee. This apparent ambiguity can be seen in text box 5 below:

- (2) A company to which this regulation applies must appoint a social and ethics committee unless—
 - (a) it is a subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required by this regulation on behalf of that subsidiary company; or
 - (b) it has been exempted by the Tribunal in accordance with section 72 (5) and (6).
- (3) A board of a company that is required to have a social and ethics committee, and that—
 - (a) exists on the effective date, must appoint the first members of the committee within 12 months after—

- (i) the effective date; or
- (ii) the determination by the Tribunal of the company's application, if any, if the Tribunal has not granted the company an exemption;

*Text box 5: Appointment of the social & ethics committee and its members
[Companies Regulations 43(2) & 43(3)]*

Probably the best way of dealing with this apparent ambiguity in the Regulations is to have the company, at its first annual general meeting following the appointment by the board of the first members, appoint the social & ethics committee as a permanent statutory committee and as a standing committee of the board of the company. This will be a once-off resolution that does not need to be repeated at the company's future meetings.

Once the company has taken the decision to appoint a social & ethics committee, the board can appoint new and additional members of the social & ethics committee as and when required. It is recommended that a company involve its nominations committee – if it has one – in the selection of members of the social & ethics committee in order to ensure that the right mix of skills and talent is selected. Unlike the requirement in the Companies Act for shareholders to annually elect individual members of an audit committee, there is no corresponding requirement in the Companies Act for shareholders to elect individual members of a social & ethics committee at each annual general meeting of the company.

2.4. Mandate of a social & ethics committee

The mandate of the social & ethics committee is outlined in the Companies Regulations 43(5). According to this regulation, the Committee has three functions to fulfil. These functions can be divided into monitoring responsibilities and reporting responsibilities.

Monitoring responsibilities

The first function that the social & ethics committee must fulfil is to monitor the company's activities with regard to its social impact in five areas. These areas are:

- Social and economic development;
- Good corporate citizenship;
- The environment, health and public safety;
- Consumer relationships; and
- Labour and employment.

The responsibilities of the social & ethics committee

When the social & ethics committee monitors each of these five areas, it has to take into consideration the following standards:

- Any relevant legislation;
- Other legal requirements; or
- Prevailing codes of best practice.

The Regulations provide very scant guidance on what the relevant legislation, other legal requirements and best practice codes might be.

In the area of “social and economic development”, the codes and laws that are mentioned are:

- The United Nations Global Compact Principles;
- The OECD recommendations regarding corruption;
- The Employment Equity Act; and
- The Broad-Based Black Economic Empowerment Act.

In the area of “good corporate citizenship” no specific codes or laws are mentioned. Instead, the following aspects to be monitored are mentioned:

- Promotion of equality;
- Prevention of unfair discrimination;
- Reduction of corruption;
- The company's contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and
- The company's record of sponsorship, donations and charitable giving.

With regard to the “environment, health and public safety” there also is no reference to any specific codes or laws, but it is mentioned that the company needs to monitor the impact of its activities and of its products or services on the environment, health and public safety.

Likewise, in the area of “consumer relationships”, no specific codes or laws are mentioned. However, mention is made of:

- The company's advertising;
- The company's public relations; and
- Compliance with consumer protection laws.

In the fifth area that needs to be monitored, namely “labour and employment”, a specific standard as well as two more aspects that need to be monitored are mentioned. They are:

- The International Labour Organization Protocol on decent work and working conditions;
- The company's employment relationships; and
- The company's contribution towards the educational development of its employees.

No such document as the “International Labour Organization Protocol on decent work and working conditions” exists. This was officially confirmed by the Department of Trade and Industry (cf. KPMG 2012:102). There are, however, a number of core conventions of the International Labour Organization that explicitly address issues of decent work and working conditions.

The rather scant references to relevant legislation, other legal requirements, and best practice codes means that social & ethics committees will need to apply their minds in selecting the relevant laws, codes and standards against which they will need to monitor the company's social impact.

Reporting responsibilities

Besides its monitoring responsibility, the social & ethics committee also has two further reporting responsibilities.

The first reporting responsibility is articulated in Regulation 34(5)(b). In terms thereof, the social & ethics committee needs to draw matters within its mandate to the attention of the company's board as and when the committee deems it necessary for the board to consider such matters. Once more, no criteria are provided for which matters need to be brought to the attention of the board, or when it should do so. It would be safe to assume that social matters posing a material risk to the company need to be elevated to board level.

The second reporting responsibility of the social & ethics committee is to report on the matters within its mandate to shareholders at the company's annual general meeting. Also with regard to this reporting responsibility the Companies Regulations provide no guidance on the manner and format in which reporting needs to be done.

The mandate of the social & ethics committee is displayed in text box 6 below:

- 
- (5) A social and ethics committee has the following functions:
- (a) To monitor the company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to -
 - (i) social and economic development, including the company's standing in terms of the goals and purposes of—
 - (aa) the 10 principles set out in the United Nations Global Compact Principles; and
 - (bb) the OECD recommendations regarding corruption;
 - (cc) the Employment Equity Act; and
 - (dd) the Broad-Based Black Economic Empowerment Act;
 - (ii) good corporate citizenship, including the company's—

The responsibilities of the social & ethics committee

- (aa) promotion of equality, prevention of unfair discrimination, and reduction of corruption;
- (bb) contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and
- (cc) record of sponsorship, donations and charitable giving;
- (iii) the environment, health and public safety, including the impact of the company's activities and of its products or services;
- (iv) consumer relationships, including the company's advertising, public relations and compliance with consumer protection laws; and
- (v) labour and employment, including—
 - (aa) the company's standing in terms of the International Labour Organization Protocol on decent work and working conditions; and
 - (bb) the company's employment relationships, and its contribution toward the educational development of its employees;
- (b) to draw matters within its mandate to the attention of the Board as occasion requires; and
- (c) to report, through one of its members, to the shareholders at the company's annual general meeting on the matters within its mandate.

*Text box 6: Mandate of the social & ethics committee
[Companies Regulations 43(5)]*

2.5. Powers of a social & ethics committee

In order to empower the social & ethics committee to fulfil its functions, section 74(8) of the Companies Act bestows certain powers and rights upon the committee. These powers and rights enable the committee to fulfil both its monitoring and reporting roles. The following powers and rights are given to the social & ethics committee:

- The power to require from any director, or prescribed officer or employee of the company any information or explanation that is needed for the committee to fulfil its prescribed functions;
- The right to attend any general meeting of the shareholders of the company;
- The right to receive all communications and notices related to any general meeting of the company's shareholders; and
- The right to address any general meeting of the company's shareholders on any part of the business of such a meeting that is related to the functions of the social & ethics committee.

Besides the powers given to the social & ethics committee, the Companies Act also ensures that the social & ethics committee will have sufficient financial and human resources to exercise its functions, with the company providing the following:

- Covering all expenses reasonably incurred in the exercise of its prescribed functions; and
- Paying for the services of consultants or specialists it might contract to assist it in performing its prescribed functions.

The above resources granted to the social & ethics committee by the Companies Act obviously have financial implications that need to be properly budgeted for.

The powers, rights and resources granted to the social & ethics committee can be seen in text box 7 below:

- (8) A social and ethics committee of a company is entitled to—
 - (a) require from any director or prescribed officer of the company any information or explanation necessary for the performance of the committee's functions;
 - (b) request from any employee of the company any information or explanation necessary for the performance of the committee's functions;
 - (c) attend any general shareholders meeting;
 - (d) receive all notices of and other communications relating to any general shareholders meeting; and
 - (e) be heard at any general shareholders meeting contemplated in this paragraph on any part of the business of the meeting that concerns the committee's functions.
- (9) A company must pay all the expenses reasonably incurred by its social and ethics committee, including, if the social and ethics committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the social and ethics committee in the performance of its functions.

*Text box 7: Powers and resources of the social & ethics committee
[Companies Act, Sections 72(8) & 72(9)]*

2.6. Non-compliance with the social & ethics committee requirement

The Companies Act also makes provision for actions to be taken against companies that do not comply with the requirement of having a social & ethics committee. The steps that can be taken against a non-compliant company are outlined in section 84(6) and (7) of the Act.



Running an effective social & ethics committee

In the discussion on the composition, functions and powers of the social & ethics committee in Part Two, it has already transpired that the Companies Act and Regulations at times provide rather scant information on how a social & ethics committee should be constituted and how it should function. In order to run an effective social & ethics committee, a company, its board and the members of the social & ethics committee will have to apply their minds to various aspects related to the social & ethics committee. These matters include the charter and mandate, membership, criteria for monitoring and reporting corporate social and ethics performance, the work plan and meetings of the social & ethics committee. The social & ethics committee also needs to get clarity on how it will report to the company's board and to the annual general meeting of the shareholders.

All these practical matters that will ultimately determine the effectiveness of a social & ethics committee will be discussed below.

3.1. Charter and mandate

A first challenge for a company is to get clarity on the roles and responsibilities of its social & ethics committee. It has already been indicated that the social & ethics committee is simultaneously a statutory committee and a board committee. As a statutory committee it has specific legal duties of monitoring and reporting, but as a board committee the board can also assign further responsibilities to the social & ethics committee in order to assist the board in exercising its responsibility for governing the social and ethics performance of the company.

The roles and responsibilities of the social & ethics committee should preferably be clarified in a Charter (or Terms of Reference) that outlines the following aspects of the functioning of the social & ethics committee:

- **The name of the committee**
E.g. will the name of the committee simply be the Social & Ethics Committee? Or will it be combined with an existing committee, such as a transformation committee of the board and thus be called the Social, Ethics, and Transformation Committee?
- **Membership**
E.g. besides the required members of the social & ethics committee as prescribed by the Regulations, will there be any other members of the committee? How will these members be appointed? What will be the term of office of committee members?
- **Responsibilities**
E.g. besides the statutory prescribed responsibilities of the social & ethics

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committee, are there any other board responsibilities that the company or the board of directors wishes to delegate to the social & ethics committee?

- **Authority**
What rights and powers are given to the committee? Can they make decisions on behalf of the board and the company? Or does the committee only have monitoring and reporting powers? To what resources of the company does the committee have access?
- **Operating procedures**
E.g. how will the committee function? How often will it meet? Who else will attend the meetings, besides the members of the committee? What will be on the agenda of each meeting? How will decisions be made?
- **Reporting**
E.g. how often does the committee have to report on its activities? How will the committee report to the board? How will the committee report to shareholders at the annual general meeting?
- **Evaluation**
E.g. how will the social & ethics committee be evaluated? How often will the social & ethics committee and its members be assessed? On what matters will the committee be assessed to determine its effectiveness?
- **Approval**
E.g. who should approve the charter of the social & ethics committee? How regularly will the charter be reviewed? What procedure should be followed in reviewing the charter of the committee?

Mandate

One of the most crucial aspects that needs to be clarified in the charter is the areas of responsibility of the social & ethics committee. In other words, what exactly is the responsibility or mandate of the social & ethics committee?

A useful starting point for defining the scope of responsibility of the social & ethics committee is to start with its mandate as set out in Regulation 43(5). Many companies indeed simply copy Regulation 43(5) into their social & ethics committee charter. There are however some limitations to such a cut-and-paste way of defining the mandate of the social & ethics committee.

The first limitation is that the company thereby fails to apply its own mind and logic to the description of the mandate of the social & ethics committee. The mandate as described in the Regulations is at times confusing and incomplete. For example, the issues of 'employment equity' and 'corruption prevention' appear under both the areas of 'social and economic development' and 'good corporate citizenship', which indicates that the areas overlap and are not well-distinguished from each other. Furthermore, the descriptions of what is included under each of the areas that need to be monitored and reported by the social & ethics committee tend to be scant and

incomplete in the Regulations. In addition – as was pointed out in Part One – the governance of ethics is completely disregarded in the description of the mandate of the social & ethics committee in the Regulations.

Consequently, a company and its social & ethics committee would do well to apply their minds to a proper description of the areas for which the committee is responsible.

In the diagram below, an example is given of how the various areas that need to be monitored and reported can be re-organised according to the four areas of corporate responsibility that were discussed in Part One of this handbook. These four areas of corporate responsibility are the marketplace, workplace, social environment, and the natural environment.



Diagram 3: Areas of responsibility of the social & ethics committee

Besides applying their mind to the monitoring and reporting mandate of the social & ethics committee as described in the Companies Regulations, the company, board or social & ethics committee also need to decide whether additional responsibilities should be given to the social & ethics committee. One obvious area of responsibility that could be given to the social & ethics committee is the responsibility for monitoring and reporting on the ethics performance of the company as recommended in Principle 1.3 of King III.

If the monitoring and reporting mandate of the social & ethics committee is extended

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to include the monitoring and reporting of the company's ethics, the mandate can, for example, be articulated as in text box 9 below:

- Ensuring that the company's ethics is managed effectively (as recommended in principle 1.3 of the King Report on Governance for South Africa, 2009), including –
- leadership demonstrating support for ethics throughout the company;
 - a strategy for managing ethics that is informed by the negative and positive risks the company faces;
 - ethical standards are articulated in a code of ethics and supporting ethics policies;
 - structures, systems and processes are in place to ensure that the various boards, employees and supply chains are familiar with and adhere to the company's ethical standards;
 - ethics performance is included in the scope of internal audit and reported on in the Company's integrated annual report; and
 - ethics is imbedded in the corporate culture.

(Drafted by Andrew Johnston, group company secretary of the Altron group, and available at www.ethicssa.org)

Text box 9: Mandate for monitoring and reporting on ethics.

In addition to extending the monitoring and reporting mandate of the social & ethics committee, the company might also decide to give responsibilities to the committee that go beyond monitoring and reporting. Such additional powers might include advising the board on the strategic direction of the company's social and ethics performance, or the board might even delegate decision-making powers on specific well-defined matters to its social & ethics committee.

3.2 Criteria for monitoring and reporting

As the statutory responsibilities of the social & ethics committee revolve around monitoring and reporting, the social & ethics committee will need to get clarity about the criteria against which it will monitor and report on the areas of social and ethics performance included in its mandate.

The Companies Act and Regulations are however not very specific about which criteria the social & ethics committee should employ to monitor and report. The Companies Regulations states that the areas within its domain of responsibility should be monitored against *“any relevant legislation, other legal requirements or*

prevailing codes of best practice” [Regulation 43(5)(a)], but only in the case of two of the five areas that should be monitored do the Regulations indicate what some of the relevant laws and best practice codes might be. In respect of the other areas, it is left to the discretion of the social & ethics committee to decide what the relevant laws and codes might be.

With regard to each of the five areas in which the social & ethics committee should monitor the social impact of the company, there are some legislation and codes of best practice that seem to be obviously relevant. Some of these relevant laws and best practice codes in each of the five areas are listed below:

Social and economic development

The codes and laws mentioned in the Companies Regulations are:

- United Nations Global Compact Principles;
- OECD recommendations regarding corruption;
- Employment Equity Act; and
- Broad-based Black Economic Empowerment Act.

Other relevant laws and codes are:

- Further guidance documents related to the United Nations Global Compact, such as:
 - Blueprint for Corporate Sustainability Leadership;
 - Guiding Principles on Business and Human Rights (the so-called Ruggie Report of 2011); and
 - Reporting guidance on the 10th principle against corruption;
- Transparency International's Business Principles for Countering Bribery;
- International Labour Organization Discrimination (employment and occupation) Convention;
- Prevention and Combating of Corrupt Activities Act; and
- Industry Charters (e.g. Mining Charter).

Good corporate citizenship

No specific codes or laws relating to good corporate citizenship are mentioned in the Regulations. Some relevant laws and codes are:

- Employment Equity Act;
- Bill of Rights of the South African Constitution (specifically the Right to Equality);
- Promotion of Equality and Prevention of Unfair Discrimination Act;
- United Nations Global Compact:
 - Reporting guidance on the 10th principle against corruption;
- Prevention and Combating of Corrupt Activities Act; and
- Competition Act.

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The environment, health and public safety

Likewise, with regard to this area of social responsibility no specific codes or laws are mentioned in the Regulations. Some relevant laws and codes are:

- Consumer Protection Act (product safety provisions);
- National Environmental Management Act;
- Environment Conservation Act;
- National Water Act;
- ISO 14000; and
- United Nations Environment Programme (business guidance publications).

A company's carbon footprint can also be used as a criterion for monitoring and reporting its environmental impact.

Consumer relationships

In this area of social responsibility no specific codes or laws are mentioned in the Regulations. Some relevant laws and codes are:

- Consumer Protection Act;
- National Credit Act; and
- Code of Advertising Practice of the Advertising Standards Authority of South Africa.

Labour and employment

With regard to labour and employment, the “International Labour Organization Protocol on decent work and working conditions” is mentioned in the Companies Regulations, but, as indicated earlier in Part Two, no such protocol exists. However, guidance on decent work can be found in the core conventions of the International Labour Organization listed below:

- International Labour Organization Declaration on Fundamental Principles and Rights at Work (in particular the eight core Conventions 100, 111, 87, 98, 138, 182, 29, 105).

Also the following laws and codes are relevant:

- Basic Conditions of Employment Act;
- Occupational Health and Safety Act;
- Labour Relations Act;
- Skills Development Levies Act;
- Unemployment Insurance Act; and
- Protected Disclosures Act.

Ethics

Should a company opt also to include the governance of ethics in the mandate of its social & ethics committee, the following codes and standards would be relevant:

- King III Practice Notes on Ethics Management;
- JSE SRI Index (ethics criteria);

- United States Federal Sentencing Guidelines (ethics management criteria); and
- The EthicsSA South African Corporate Ethics Indicator (SACEI) Index.

The social & ethics committee will have to develop a set of criteria for monitoring and reporting based upon the specific prescriptions provided in the Regulations as well as upon a review of relevant legislation and codes, such as those mentioned above. The above list is however not an exhaustive list of relevant legislation and codes. Each industry has specific laws, regulations and codes that are applicable only to that industry, and the social & ethics committee should take such industry specific laws, regulations and codes of best practice into consideration when compiling its criteria for monitoring and reporting the company's social and ethics performance.

An additional (and a strongly recommended) approach is to use the criteria found in standards such as the Global Reporting Initiative, generation 3.1 guidelines (GRI G3.1), International Standards Organization Guidance on Social Responsibility (ISO 26000), and the Johannesburg Stock Exchange Socially Responsible Investment (JSE SRI) Index as criteria for monitoring and reporting on the social and ethics performance of the company.

The diagram below illustrates the extent to which the five areas of social responsibility prescribed in the Companies Regulations are covered in GRI G3, ISO 26000 and the JSE SRI Index.

	GRI G3.1	ISO 26000	JSE SRI
Social & economic development	YES	YES	YES
Good corporate citizenship	YES	YES	YES
Environmental, health & safety	YES	YES	YES
Consumer relations	YES	YES	NO
Labour & employment	YES	YES	YES

Diagram 4: Social responsibility areas covered in GRI G3.1, ISO 26000 & JSE SRI Index

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The obvious limitation of the GRI and ISO 26000 is that they are global standards and thus provide generic guidelines that do not take specific South African legislation and regulatory requirements into consideration. Thus, when such global standards are used, they need to be supplemented with criteria and indicators reflecting South African legislation and other legal requirements, as specifically indicated in the Companies Regulations. The JSE SRI Index provides criteria that do reflect more local South African standards, although still not all relevant laws and codes required by the Companies Act and Regulations. A specific area of social responsibility that is, for example, not reflected in the JSE SRI Index is consumer relations, and, in particular, the requirements of the Consumer Protection Act.

There are a number of benefits in using criteria provided by social responsibility standards such as GRI, ISO 26000 and the JSE SRI Index. These benefits are:

- These standards provide criteria that are not selected on arbitrary grounds, but represent at least some degree of global consensus on relevant criteria;
- Using one of these standards ensures that the company can compare and benchmark itself against other companies using a similar standard;
- Should a company already be doing sustainability reporting against one of these standards the social & ethics committee can draw on - or build upon - already existing monitoring and reporting processes in the company;
- It eases the process of reporting to both the board of directors and shareholders at the annual general meeting as the social & ethics committee can draw upon the sustainability or integrated report of the company in its reporting; and
- It brings rigour and discipline into the process of monitoring and reporting as these standards identify specific performance indicators against which a company needs to monitor and report its social and ethics performance.

3.3 Format of reporting

Whereas the above criteria for social and ethics monitoring refer to “the what” of reporting, the format of reporting refers to “the how” of reporting. The question is thus: How should the social & ethics committee report to shareholders at the annual general meeting of the company?

Also, in the case of reporting on the social and ethics performance of the company there is substantial guidance on the format of reporting upon which the social & ethics committee can draw. International standards – such as the Global Reporting Initiative, generation 3.1 guidelines (GRI G3.1) and the AA 1000 AccountAbility Principles Standard – provide guidance on principles of reporting. Also, within the South African context, the King III report and the discussion paper on a Framework for Integrated Reporting and the Integrated Report provide useful guidance on the

principles that should guide the process and format of reporting. The latter report, for example, mentions the following principles that should inform the quality of reported information:

- Comparability and consistency;
- Verifiability;
- Timeliness; and
- Understandability or clarity.

3.4 Membership

The Regulations prescribe that the company's board should appoint at least three directors (or prescribed officers) as members of the social & ethics committee. One of these directors must be a non-executive director. The Regulations, however, clearly state that these three directors should be the “*the first members of the committee*” [43(3)]. This Regulation thus opens the door for the board (or the company) to appoint additional members to the social & ethics committee. The board needs to assess what expertise and skills are required for the social & ethics committee to fulfil its mandate effectively and needs to make financial provision for such appointments.

The King III recommendations on the appointment of board committees (Principle 2.23) should be taken into consideration when deciding on further members of the social & ethics committee. For the sake of avoiding conflicts of interest and of providing objective oversight of the company's social and ethics performance, the majority of members of the committee should be non-executive directors and, preferably, independent non-executive directors.

Of utmost importance for running an effective social & ethics committee is the combination of talent in the committee. Persons with relevant expertise in the field of social and ethics performance need to be selected to the social & ethics committee. If a company has a nominations committee, this committee should preferably advise the board on the selection of members for the social & ethics committee.

Since there inevitably will be some cross-interests between the social & ethics committee and other committees of the board, such as the audit and/or risk committee, it will make sense to have a member of such other committee(s) also as an ex officio member of the social & ethics committee.

Besides the members of the committee, the charter of the social & ethics committee should also determine whether there will be standing or ad hoc invitees of the committee. In deciding on such invitees, the social & ethics committee needs to look at its informational needs. Which operational committees or functional areas in the

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company have the information that the social & ethics committee needs to perform its monitoring and reporting roles?

Key information providers – for example, an operational sustainability committee, human resources, internal audit, ethics office, governance, legal and compliance, etc. – could be invited as standing invitees of the social & ethics committee. Other information providers that might only on occasion be required to provide information to the committee can be invited as ad hoc invitees of the social & ethics committee.

Should the board or the company have a lack of expertise in a specific area(s) that falls within the mandate of the board, it can be considered to have an outside expert(s) as a standing or ad hoc invitee(s) of the committee.

Invitees of the committee will be able to participate in the deliberations of the social & ethics committee, but obviously will have no voting rights.

3.5 Meetings

The chairperson of the social & ethics committee needs to be appointed or selected according to the procedure stipulated in the charter of the committee. The chairperson will be responsible for chairing meetings of the social & ethics committee. S/he will also be responsible for bringing social and ethics matters of material relevance to the attention of the board, as well as for reporting to the shareholders at the company's annual general meeting.

In addition, a secretary of the social & ethics committee needs to be appointed according to the procedure stipulated in the committee's charter. The secretary can be a member of the committee or a standing invitee of the committee. Some companies opt for making the company secretariat responsible for fulfilling the secretarial role for the social & ethics committee.

It is vitally important that accurate minutes of meetings of the social & ethics committee be kept. When queries or concerns are raised about the company's social and ethics performance or reporting, the minutes of the social & ethics committee might play a crucial role in the company's response to such queries or concerns. It therefore is a good practice to include the minutes of social & ethics committee meetings as part of the full meeting pack of the board meeting immediately following the social & ethics committee meeting.

If not determined in the charter of the social & ethics committee, the committee will need to decide on the number of meetings to be held during each reporting year. The

number of meetings that will be needed for the social & ethics committee to dispose of its responsibilities will depend on a variety of factors, such as the size of the company, the mandate of the social & ethics committee, the company's social and ethics risk profile, and the specific industry in which the company operates.

3.6 Work plan

Once the social & ethics committee has clarity about its mandate it can decide on its work plan for the year. The work plan will have to match the mandate of the social & ethics committee with the number of meetings scheduled per year.

The work plan should ensure that the committee meets all its monitoring and reporting responsibilities within an annual cycle. In this regard, the committee might decide to attend to all aspects within its mandate at each of its meetings, or it might opt for a rolling agenda approach. In the case of a rolling agenda, the committee will not address all aspects of its mandate at each of its meetings. Instead, it will spread the various aspects of its mandate over two or more meetings and only address specific aspects of its mandate at specific meetings of the committee. A committee might, for example, decide to devote every second meeting to the marketplace and workplace aspects of its mandate, while the alternate meetings are devoted to the social and natural environment aspects of its mandate. Should a company take the rolling agenda approach, all invitees of the social & ethics committee need not attend all committee meetings. Only those invitees who have to make an input on the matters discussed at a specific meeting will need to attend.

It is also likely that the committee will devote its meeting immediately preceding the company's annual general meeting to finalising its reporting responsibilities for the annual cycle.

The work plan of the committee will enable the information providers of the social & ethics committee to plan ahead in order to ensure that they deliver the required information to the social & ethics committee on time.

3.7 Relationship with other board committees and operational structures

In fulfilling its mandate, the social & ethics committee should ensure that there is synergy and synchronisation between its activities and those of the company's other

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board committees and operational structures. What should be avoided at all cost is duplication and silos in the company where the same social and ethics matters are attended to by more than one board committee, or where the committee is unaware that matters within its mandate are already addressed by other board committees or operational structures.

In selecting its information providers, the committee should ensure that it has access to all the company's operational structures that deal in some or other way with the matters within its mandate. Such operational structures might include, for example, the company's internal audit, human resources, legal compliance, ethics office, or marketing functions. It also might include specific operational committees, such as a sustainability, safety and health, stakeholder relations, or ethics committee of the company. Moreover, of particular importance would be to ensure close collaboration between the social & ethics committee and the company's operational structure responsible for sustainability reporting, as the reporting of the social & ethics committee preferably should be closely aligned with the company's sustainability and integrated reporting.

There are also synergies between the mandate of the social & ethics committee and those of other board committees, like the audit committee and the risk committee. The risk committee will have to follow up on social or ethics risks that the social & ethics committee might uncover as part of their monitoring responsibilities. When such risks are exposed, the risk committee will have to advise the company's board on how those risks should be mitigated. The audit committee is linked to the social & ethics committee by the audit committee's responsibility for the sustainability and integrated reporting of the company. In order to ensure congruence between reporting by the social & ethics committee and the company's sustainability and integrated reporting there needs to be close links between these two committees. For this reason, it was suggested earlier that it would make sense to have a member of the risk committee and a member of the audit committee as either ex officio members or standing invitees of the social & ethics committee.

This link between the social & ethics committee and the risk committee and audit committee has implications for the scheduling of the meetings of these committees. For example, the fact that the risk committee will follow up on social and ethics risks identified by the social & ethics committee, implies that the meetings of the risk committee should be scheduled to follow after the meetings of the social & ethics committee.

There might also be other board committees, e.g. governance or health & safety committees, with a direct interest in the work of the social & ethics committee and similar arrangements need to be made in such cases to ensure synergy and synchronisation between the social & ethics committee and other board committees.

3.8. Reporting to the board of directors

In terms of its mandate, the social & ethics committee is responsible for drawing matters within its mandate to the attention of the board as and when required. This reporting responsibility is thus left to the discretion of the social & ethics committee and is therefore likely to happen on an ad hoc basis.

The company's board can also decide that a report from the social & ethics committee should become a standing item at board meetings, in which case the social & ethics committee will need to report at each meeting where the social and ethics performance of the company is on the board's agenda. This is more likely to happen where a board has extended the mandate of the social & ethics committee by delegating the board's responsibility for directing and controlling the company's social and ethics performance to its social & ethics committee.

3.9. Reporting to general meetings of shareholders

Since the Companies Act and Regulations are rather vague about the format of the social & ethics committee's reporting to shareholders at the company's general meetings, the board and social & ethics committee will need to get clarity about how this reporting responsibility will be performed.

The Companies Regulation [43(5)(c)] merely states that the social & ethics committee must *"report through one of its members to the shareholders at the company's annual general meeting"*. In addition, the Companies Act [72(8)(e)] states that a social & ethics committee is entitled to *"be heard at any general shareholders meeting [...] on any part of the business of the meeting that concerns the committee's functions"*.

This implies that some form of verbal report must be given at the company's annual general meeting. Given the wide scope of responsibilities of the social & ethics committee and the typical time constraints of an annual general meeting, it is likely that the verbal report will be complemented with a written report. If the report of the social & ethics committee is closely aligned with the sustainability and integrated reporting of the company – as recommended above – the verbal report can refer shareholders to these reports. Should a company not publish a sustainability or integrated report, the social & ethics committee most likely will need to refer its shareholders to some form of written report on the monitoring and reporting that was done by the social & ethics committee.

Conclusion

The single sentence in the first draft of the Companies Act of 2008 that originally introduced a new statutory board committee [72(4)] has already triggered substantial reconfiguration of board structures, responsibilities and activities.

Although some companies are grudgingly complying with this new requirement, others are embracing it. Some companies are embracing it because they have been governing their companies' social and ethics performance long before the Companies Act compelled them to do so, whilst others see strategic benefit in complying with this new requirement.

The financial penalties that a company and individual directors might face for not complying with the social & ethics committee requirement do not seem to be the main driver of compliance. A stronger driver is the reputational damage a company might suffer for not having a properly functioning social & ethics committee. A company stands to be embarrassed if it should be exposed for either not having a social & ethics committee, or for having a committee that merely engages in a superficial 'tick-box' manner with the social & ethics committee requirement.

By having an effective social & ethics committee, a company stands to benefit in the following ways:

- The company will be applying the best practice recommendations of the King III Report by taking board responsibility for the company's social and ethics performance;
- Social and ethics matters that might pose a risk to the company's performance will be strategically considered at board level;
- The company will have an additional mechanism, besides its sustainability and integrated reporting, to report its social and ethics performance to shareholders. This is likely to bolster shareholder and investor trust in the company;
- Companies that are not yet doing any form of sustainability or integrated reporting will be starting the journey of moving beyond financial reporting;
- By complying with the legislation and legal requirements either mentioned or implied by the social & ethics committee section of the Companies Act and Regulations the company will ensure that it is compliant with core corporate legal requirements;
- An effective social & ethics committee is likely to enhance the corporate responsibility and ethics performance of the company; and
- The company is likely to gain in stakeholder trust and reputational value.

We trust that this handbook will help companies to experience the above benefits of having an effective social & ethics committee.

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www.accountability.org/standards/aa1000aps.html

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www.info.gov.za/documents

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www.unglobalcompact.org/docs/news_events/8.1/Blueprint.pdf

Code of Advertising Practice of the Advertising Standards Authority of South Africa

www.asasa.org.za/default.aspx?mnu_id=11

Framework for Integrated Reporting and the Integrated Report

www.sustainabilitysa.org

Global Reporting Initiative (GRI)

www.globalreporting.org

Guiding Principles on Business and Human Rights

www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf

International Labour Organization Decent Work Agenda

www.ilo.org/global/topics/decent-work

International Labour Organization Declaration on Fundamental Principles and Rights at Work

www.ilo.org/declaration/thedeclaration/textdeclaration/lang-en/index.htm

International Labour Organization Discrimination (employment and occupation) Convention

www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312256

ISO 14000

www.iso.org/iso/iso14000

ISO 26000 Guidance on Social Responsibility

www.iso.org/iso/home/standards/iso26000.htm

JSE Socially Responsible Investment (SRI) Index

www.jse.co.za/Libraries/SRI_Criteria_Documents/01_Background_and_Criteria_2011.sflb.ashx

King III Report, Code and Practice Notes

www.iodsa.co.za

OECD recommendations regarding corruption

www.oecd.org/corporate/guidelinesformultinationalenterprises/2638728.pdf

South African Corporate Ethics Indicator (SACEI) Index

www.ethicsa.co.za/uploads/files/ethicsindicatorElectronic.pdf

Transparency International's Business Principles for Countering Bribery

www.transparency.org/whatwedo/pub/business_principles_for_countering_bribery

United Nations Environment Programme (business guidance publications)

www.unep.org/resources/business/Publications/

United Nations Global Compact

www.unglobalcompact.org

United States Federal Sentencing Guidelines (ethics management criteria)

www.ussc.gov/Guidelines/2010_guidelines/Manual_HTML/8b2_1.htm

About the author

Deon Rossouw studied at Stellenbosch University where he also was chairman of the student representative council. He started teaching Philosophy in 1986 at Rand Afrikaans University in Johannesburg where he became Professor and Head of the Philosophy Department. He served on the Executive Committee of the Rand Afrikaans University. In 2004, he moved to the University of Pretoria where he was Head of the Philosophy Department and Director of the Centre for Business and Professional Ethics. During 2008 and 2009, he spent a year as Programme Executive for Business Ethics at the Globethics.net Foundation based in Geneva, Switzerland. Currently, he is the CEO of the Ethics Institute of South Africa and Extraordinary Professor in Philosophy at the University of Pretoria and at the University of Stellenbosch.

Deon Rossouw specialises in the field of Business Ethics and the Ethics of Corporate Governance. He wrote several books on business ethics and published in leading international journals. He was the Founding President of the Business Ethics Network of Africa (BEN-Africa) and served as President of the International Society of Business, Economics and Ethics (ISBEE). He also served as a member of the Research Team for the Second King Report on Corporate Governance and is a member of the Sustainability Committee of the Third King Report on Corporate Governance for South Africa.

About EthicsSA

The Ethics Institute of South Africa (EthicsSA) is a non-profit, public-benefit organisation that commenced operations in August 2000. The organisation is governed by a board of directors consisting of prominent persons committed to promoting ethical responsibility.

EthicsSA's vision is: *"Building an ethically responsible society"*.

We achieve our vision by forming partnerships with the public and private sectors, and the professions. EthicsSA serves as a resource through our thought leadership, research, training, support, assessment and certification activities.

Thought leadership

EthicsSA is committed to stimulate and advance awareness of ethics in South Africa and in other countries on the African continent where we are active. We participate regularly in public debates in the media and contribute to policy formulation in respect of business ethics, corruption prevention and professional ethics.

Services offered

EthicsSA offers a wide array of services related to the management of ethics in organisations and professions. These services include:

Training Public and in-house training programmes on a range of ethics-related themes;

Advisory services Consulting to public-sector and private-sector organisations and professional associations on matters related to the management of ethics;

Assessments Assisting organisations with gauging their current state of ethics through a variety of assessment instruments;

Certification Certifying certain ethics-related services and service providers in order to provide assurance that these services and service providers meet relevant ethics standards;

Project management Acting as project manager for donor organisations wishing to enhance good governance, corruption prevention, or professional ethics; and

Membership services Offering subscription membership to individuals and organisations, with a variety of membership benefits.

More information on EthicsSA can be found at www.ethicssa.org

About GIZ

Broad-based expertise for sustainable development – under one roof

Working efficiently, effectively and in a spirit of partnership, we support people and societies worldwide in creating sustainable living conditions and building better futures. The services delivered by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH draw on a wealth of regional and technical competence and tried and tested management expertise. Since 1 January 2011, GIZ has brought together under one roof the capacities and long-standing experience of three organisations: the Deutscher Entwicklungsdienst (DED) gGmbH (German Development Service), the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH (German technical cooperation) and Inwent – Capacity Building International, Germany. As a federal enterprise, we support the German Government in achieving its objectives in the field of international cooperation for sustainable development. We are also engaged in international education work around the globe.

Making development effective

We offer demand-driven, tailor-made and effective services for sustainable development. To ensure the participation of all stakeholders, we apply a holistic approach based on the values and principles upheld in German society. This is how we facilitate change and empower people to take ownership of their own sustainable development processes. In doing this, we are always guided by the concept of sustainable development, and take account of political, economic, social and ecological factors. We support our partners at local, regional, national and international level in designing strategies and meeting their policy goals.

Developing solutions

GIZ operates in many fields, economic development and employment promotion; governance and democracy; security, reconstruction, peace building and civil conflict transformation; food security, health and basic education; and environmental protection, resource conservation and climate change mitigation. We also support our partners with management and logistical services, and act as an intermediary, balancing diverse interests in sensitive contexts. In crises, we carry out refugee and emergency aid programmes. As part of our services, we also second development workers to partner countries.

Through programmes for integrated and returning experts, we place managers and specialist personnel in key positions in partner countries. We also promote networking and dialogue among actors in international cooperation. Capacity development for partner-country experts is a major component of our services, and we offer our programme participants diverse opportunities to benefit from the contacts they have made. We also give young people a chance to gain professional experience around the world – exchange programmes for young professionals lay the foundations for successful careers in national and international markets.

Who we work for

Most of our work is commissioned by the German Federal Ministry for Economic Cooperation and Development. GIZ also operates on behalf of other German ministries – including the Federal Foreign Office, the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, the Federal Ministry of Defence, the Federal Ministry of Economics and Technology and the Federal Ministry of Education and Research – as well as German federal states and municipalities, and public and private sector clients in Germany and abroad. These include the governments of other countries, the European Commission, the United Nations and the World Bank. We work closely with the private sector and promote synergies between the development and foreign trade sectors. Our considerable experience with networks in partner countries and in Germany is a key factor for successful international cooperation, not only in the business, research and cultural spheres, but also in civil society.

Global reach – the company at a glance

GIZ operates in more than 130 countries worldwide. In Germany, we maintain a presence in nearly all the federal states. Our registered offices are in Bonn and Eschborn. GIZ employs more than 17,000 staff members across the globe – some 70% of whom are employed locally as national personnel. In addition, there are around 1,110 development advisors, 700 integrated and 455 returning experts, 700 local experts in partner organisations and 820 weltwärts volunteers. With a business volume of around EUR 1.85 billion, GIZ is well placed to meet the challenges of tomorrow.

More information on GIZ can be found at www.giz.de/en

About IoDSA

The IoDSA is a non-profit organisation that is unique in that it represents directors, professionals, business leaders and those charged with governance duties in their individual capacities in southern Africa. As the primary decision-makers in the private and public sectors, these individuals hold a special position of leadership and trust and are responsible — both legally and morally — for the balanced direction and proper reward of all participants in our economic enterprises.

IoDSA membership represents over 5 000 prestigious and diverse South African business leaders, providing a unique opportunity for networking and business development in all sectors. In South Africa, our membership is widely representative of commerce, industry, government and the business professions. The IoDSA is committed to the development of directors, to board learning and improving board effectiveness. Members of the IoDSA benefit from ongoing educational opportunities, leadership publications and updates featuring the latest developments in corporate governance, as well as unique networking opportunities.

The specific role that the IoDSA wishes to play in society is expressed through our vision namely that those charged with governance duties in all sectors will be empowered to discharge these duties effectively. For us our slogan “*Better directors, better boards, better business*” is truly something that inspires all that we do and we believe that all of this will eventually lead to a better South Africa.

More information on IoDSA can be found at www.iodsa.co.za

The Social & Ethics Committee Handbook

The new Companies Act of South Africa requires all state owned and publicly listed companies as well as companies with significant impact on the public interest to appoint a social & ethics committee.

This book provides guidance to companies on how to establish and run an effective social & ethics committee.

An overview of the context that gave rise to the introduction of the social & ethics committee is provided. The role that the King Reports on Governance in South Africa played in prioritising the social and ethics performance of companies is highlighted.

The book provides a close reading of the requirements of the Companies Act and Regulations regarding social & ethics committees. Specific requirements, such as the composition, mandate, and powers of the committee, as well as the consequences of non-compliance are discussed.

Since the book is aimed at practitioners, ample advice is given on the practical aspects of running an effective social & ethics committee. In this regard, crucial aspects such as the charter, membership, meetings, work plan and responsibilities of a social & ethics committee are addressed.